

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
DAVID KRETZMER, :
:
Plaintiff, : 13-CV-3060 (ENV) (LB)
:
July 24, 2013
:
V. : Brooklyn, New York
:
JACK LEFKOWITZ, et al., :
:
Defendant. :
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TRANSCRIPT OF CIVIL CAUSE FOR INITIAL CONFERENCE
BEFORE THE HONORABLE LOIS BLOOM
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: SOLOMON ANTAR, ESQ.
LEOPOLD GROSS, ESQ.

For the Defendant: MICHAEL MILLER, ESQ.

Audio Operator:

Court Transcriber: ARIA SERVICES, INC.
c/o Elizabeth Barron
102 Sparrow Ridge Road
Carmel, NY 10512
(845) 260-1377

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1 THE CLERK: Civil cause for initial
2 conference, docket number 13-CV-3060, Kretzmer v.
3 Lefkowitz, et al.

4 Would the parties please state your names
5 for the record?

6 MR. ANTAR: Solomon Antar and Leopold Gross
7 for the plaintiff.

8 MR. MILLER: Michael Miller on behalf of the
9 Lefkowitz defendants.

10 THE CLERK: The Honorable Lois Bloom
11 presiding.

12 THE COURT: Good afternoon, Mr. Antar, Mr.
13 Gross and Mr. Miller. Please be seated.

14 MR. ANTAR: Good afternoon, your Honor.
15 Your Honor, Mr. Gross would like me to ask you if he
16 would be able to address the Court partially on this
17 matter. He's going to be admitted in about another
18 week or so.

19 THE COURT: So you're making an application
20 that he be able to address the Court although he's not
21 admitted here for today?

22 MR. ANTAR: Yes.

23 THE COURT: Your application is granted, Mr.
24 Gross, but you will have to file a notice of appearance
25 as soon as you are admitted in the district.

1 MR. GROSS: Thank you, your Honor.

2 MR. ANTAR: Thank you.

3 THE COURT: This is the initial pretrial
4 conference in plaintiff's action to recovery \$3,590,000
5 in funds, which were allegedly stolen by defendants,
6 and treble damages in the amount of \$9,000,000 plus
7 attorneys' fees and costs stemming from what plaintiffs
8 allege are defendants' civil RICO violations.
9 Plaintiff also brings various common-law claims against
10 defendants, including fraud, fraud in the inducement,
11 conversion and unjust enrichment.

12 Plaintiff not only seeks judgment against
13 the corporate defendants but asks the Court to pierce
14 the corporate veil and hold the individual defendants
15 personally liable. Plaintiff also requests the Court
16 to appoint a receiver to prevent dissipation of
17 defendants' assets during the pendency of the
18 litigation.

19 I have to say that I have reviewed all of
20 the papers and I have no idea who David Kretzmer is.
21 And although he says that he's the assignee of the
22 attorneys in fact of Tibor Steinberger, who is since
23 deceased, I have no idea who he is and I have no idea
24 how he has standing to bring the case.

25 MR. ANTAR: Well, we didn't realize that at

1 this time, we'd have to produce those documents but we
2 can very well --

3 THE COURT: What are the documents that
4 you're saying --

5 MR. ANTAR: The documents are the assignment
6 and the power of attorney.

7 THE COURT: Assignment of what, sir? Power
8 of attorney gets you nowhere; it doesn't give you
9 standing. Power of attorney does not give you the
10 title or ownership of the proceeds.

11 MR. ANTAR: When Mr. Steinberger was alive,
12 he gave Mr. Kretzmer a power of attorney --

13 Do you want to address that? You have the
14 documents with you. Do you have any documents?

15 MR. GROSS: I can do it. I have a document.

16 MR. ANTAR: Okay.

17 May he address it, your Honor?

18 THE COURT: I already gave him permission,
19 whoever wants to address it.

20 MR. ANTAR: Thank you.

21 MR. GROSS: Good morning, your Honor. When
22 Tibor Steinberger was alive, he executed a power of
23 attorney for four individuals, his son-in-law, a person
24 by the name of Bernie Klein and Mr. Kretzmer and Mr.
25 Sachs, to dispose of his assets. These individuals,

1 pursuant to a power of attorney, have a assigned the
2 cause of action, this particular cause of action to Mr.
3 Kretzmer. Mr. Kretzmer is an attorney. He's a member
4 of the Bar of this Court as well as the Bar of Israel
5 and the Bar of South Africa. And that's what gives us
6 standing because an assignment of the claim was made
7 through a power of attorney while Mr. Steinberger was
8 alive.

9 THE COURT: Have you read case law on point?
10 There's a plethora of case law in the Second Circuit
11 that explicitly says that a mere power of attorney does
12 not confer standing to sue in the holder's own right
13 because a power of attorney does not confer an
14 ownership interest in the claim.

15 MR. GROSS: Agreed, your Honor. We're not
16 suing pursuant to a power of attorney. The individuals
17 with the power of attorney have already assigned the
18 cause of action. We're suing on an assignment, on an
19 assignment. It's a fully, complete assigned cause of
20 action for Mr. Kretzmer while --

21 THE COURT: Assignment of what?

22 MR. GROSS: Of the causes of action. I
23 don't know if we have the documents here but they
24 assigned the cause of action to pursue against Mr. --

25 THE COURT: Was there legal title or

1 ownership of whatever it is that you're saying that Mr.
2 Steinberger owned?

3 MR. GROSS: Absolutely, your Honor, yes.

4 THE COURT: What did Mr. Steinberger own?

5 MR. GROSS: The cause of action.

6 THE COURT: What's the cause of action?

7 MR. GROSS: A fraud, unjust enrichment,
8 returns of proceeds. Mr. Steinberger actually advanced
9 \$3,000,000 to the defendants in this case, and the
10 cause of action for return of the money is --

11 THE COURT: How come the son-in-law is not
12 pursuing it? Again, I have nothing, not a thing that
13 tells me that you have a right to pursue this action.
14 I have Kretzmer as attorney in fact of Tibor
15 Steinberger, who is since dead. That's what I have as
16 the allegation. And in fact, because this is being
17 brought as a diversity claim and the defendants are
18 alleging that you're doing that to get out of the
19 problem that, if it was actually Steinberger --
20 Steinberg is of the same citizenship as Lefkowitz and
21 there would be no basis for diversity.

22 MR. GROSS: That's not the case, your Honor.
23 Mr. Steinberger is a citizen of England. He's a London
24 citizen. Mr. Kretzmer --

25 THE COURT: Mr. Steinberger no longer

1 exists.

2 MR. GROSS: But Mr. Kretzmer --

3 THE COURT: So where is his estate? What is
4 the status of Mr. Steinberger's estate?

5 MR. GROSS: He left the world and it's in
6 the process of being probated in London, in England.

7 THE COURT: So why wouldn't the Court have
8 to wait until the probate had come to fruition and that
9 there were letters showing how the estate was going to
10 handle whatever this matter is all about?

11 MR. GROSS: Because we're suing pursuant to
12 an assignment.

13 THE COURT: Which you did not put into your
14 papers.

15 MR. GROSS: We did not put it into the
16 papers but we represent the Court that we're suing
17 pursuant to an assignment. Mr. Kretzmer has full
18 rights and ownership to the causes of action because it
19 was assigned to him.

20 THE COURT: Look, this is the problem: The
21 Court works on the papers that are presented. I'm not
22 a mind reader, Judge Vitaliano is not a mind reader,
23 okay? You're telling me that you know what the law is
24 and that there is standing, and that there is no
25 problem with diversity. And I'm telling you, in

1 looking through these papers, those are the problems
2 that pop up right away to me because I only have what
3 you gave me.

4 MR. GROSS: We believe that the complaint
5 alleges and states the residence of Mr. Kretzmer, the
6 plaintiff, in the State of Israel, Mr. Tibor
7 Steinberger --

8 THE COURT: Kretzmer means nothing to me
9 because you've only said that he's the attorney in fact
10 of Tibor Steinberger, and I have no idea who Kretzmer
11 is and I don't care that he's from Israel because,
12 again, unless you establish that he has standing to
13 bring the case, and it's unclear from your papers.
14 When you say that plaintiff is the assignee, I'm afraid
15 that Steinberger sold the lawsuit to plaintiff before
16 he died.

17 MR. GROSS: That is indeed correct.

18 THE COURT: And that is indeed correct, and
19 that is indeed illegal.

20 MR. GROSS: He assigned it.

21 MR. ANTAR: He assigned it.

22 THE COURT: But you just said he sold it.

23 MR. GROSS: I didn't pay attention to your
24 Honor's language.

25 THE COURT: Sir, you're talking to the

1 federal court. And even though you're about to be
2 admitted, your words count.

3 MR. GROSS: Let me see if I have the
4 assignment here.

5 MR. ANTAR: May I, your Honor?

6 THE COURT: You handed it off to Mr. Gross.
7 You're taking it back from Mr. Gross?

8 MR. ANTAR: He's more familiar with the
9 assignment, and I believe he has a copy of it over
10 here.

11 THE COURT: I asked specifically whether
12 Steinberger sold the lawsuit to plaintiff before he
13 died. He answered yes.

14 MR. ANTAR: He did not sell it. He did not
15 sell it. What he did -- he gave these four people a
16 power of attorney to go after, for his benefit and the
17 benefit of his children, to go after the debt that was
18 owed to them.

19 THE COURT: The power of attorney does not
20 convey standing.

21 MR. ANTAR: It gave him the right to do it.

22 THE COURT: The power of attorney does
23 nothing to convey standing.

24 MR. ANTAR: Before -- however, while he was
25 alive, they assigned it. We'd have to lay out the

1 documents, and I did not believe that it's proper to
2 lay out all of these documents in a complaint. I made
3 a statement in the complaint and verified the
4 complaint.

5 THE COURT: Again, the Court is not a mind
6 reader. When you say plaintiff is David Kretzmer,
7 assignee is the attorney in fact, Tibor Steinberger has
8 since deceased, that means nothing to me.

9 MR. GROSS: I don't have it.

10 MR. ANTAR: You don't have it.

11 THE COURT: And when you're talking about
12 millions of dollars, not pleading in a way that gives
13 the Court notice what the basis for standing is, which
14 is one of the essential elements for federal courts to
15 have jurisdiction -- you cannot have a case in court --
16 there's no subject matter jurisdiction if the plaintiff
17 lacks standing.

18 MR. ANTAR: I don't believe that it can be
19 determined that the plaintiff lacks standing from the
20 complaint alone. They would have to -- we would have
21 to delve into it a little further, so we can produce
22 these documents.

23 THE COURT: What I'm saying, Mr. Antar, is
24 that these are the issues that raise the red flag for
25 the Court, because before the Court can move a case

1 forward, they have to be assured that they have
2 jurisdiction. If there's no standing to pursue the
3 claim, there's no jurisdiction. You want a chance to
4 replead your complaint, I'll give you a chance to
5 replead your complaint. But your letters to the Court
6 are complaining about the defendants dragging their
7 feet and trying to make this drag on, and quite
8 frankly, the Court can't do a thing unless we are
9 assured that there's jurisdiction.

10 And when I got the letter which was saying
11 that any motion at this early juncture will only place
12 us well into the months of September and October -- I'm
13 sorry to say, it may be later than that.

14 MR. ANTAR: Yes, it would.

15 THE COURT: And that's not -- it's not the
16 Court's fault.

17 MR. ANTAR: No.

18 THE COURT: You come when you come to the
19 Court. We didn't tell you when you file the case. The
20 case was filed May 24th.

21 MR. ANTAR: We'll be happy to replead and
22 put all of the documents in.

23 THE COURT: Until the Court is assured that
24 there's standing --

25 MR. ANTAR: Yes.

1 THE COURT: And I do think that there is an
2 issue of whether or not Steinberger sold the lawsuit.
3 Again, you don't want anybody to be making any
4 allegations that are going to have repercussions for
5 them. You are making sworn statements in federal
6 court.

7 MR. ANTAR: Yes. Yes, I realize that.

8 THE COURT: I did ask that defendants'
9 attorney produce the alleged agreement, which I believe
10 was done because it was filed with the Court as well.
11 So on that issue, at least you've gotten that much
12 information. And of course, they're saying if you do
13 get past what they're saying are problems with the
14 complaint, because they've asked for a pre-motion
15 conference. They're talking about arbitration, that
16 the agreement says that there's going to be an
17 arbitration in the beth din of Monsey, New York.

18 Again, that's an issue. There's the
19 standing issue, which I've raised to you. There's the
20 diversity issue, which I've raised to you. I haven't
21 even touched on the failure to state a claim issue,
22 which goes to the fraud, the RICO, the statute of
23 limitations. Those are all things that are going to be
24 raised.

25 But, again, if you don't make the Court

1 confident that there is standing, that you have legal
2 title, legal title to pursue the claim, not just power
3 of attorney, then you have to alleged to title to or
4 ownership of the claim. And if you have documents to
5 show that, then that would probably be a good thing to
6 include in the complaint. Then it's part of the
7 pleading.

8 MR. ANTAR: Yes, your Honor.

9 THE COURT: How much time do you want, Mr.
10 Antar?

11 MR. ANTAR: Two weeks?

12 THE COURT: That sounds reasonable.

13 MR. GROSS: Fine, your Honor.

14 THE COURT: So that puts us to the 9th.
15 That's two weeks from Friday. Would that work for you,
16 Mr. Antar?

17 MR. ANTAR: Yes.

18 THE COURT: Okay, so 8/9/13 to replead.

19 Then, Mr. Miller, if you're going to still
20 request, then you go back to Judge Vitaliano under his
21 pre-motion conference request rules.

22 MR. MILLER: Thank you.

23 THE COURT: Because I believe that once the
24 standing issue is resolved, you're still going to be
25 making issues -- I don't know what -- you're telling me

1 for the first time you have papers, you'll include
2 papers. I take you at your word but the case law is
3 clear that unless the Court has standing, then there's
4 nothing that the Court can do further. After that, the
5 issues of diversity, the statute of limitations, the
6 fraud has to be plead with specificity under 9(b).
7 RICO claims are incredibly difficult, even for the U.S.
8 attorney's office to plead.

9 So I bring it to your attention that all of
10 those portions of your complaint that they've already
11 identified -- but most importantly, the standing issue
12 on the ownership interest in the action. And I'll give
13 you those two weeks that you've requested to replead.

14 I don't know what they're going to say on
15 standing. Do you believe that it's likely, Mr. Miller,
16 that your client is still going to assert the same
17 request to make a motion to dismiss?

18 MR. MILLER: Your Honor, on the standing
19 issue, I think it will depend on whether the theory is
20 one of power of attorney, whether it's
21 representational, whether it's assignment. So I think
22 it depends. I don't feel any closer to knowing what
23 that's going to be, so there may be a standing issue.

24 Your Honor, I have to say, I smiled when you
25 mentioned champerty, only because I was familiar with

1 the statute and have brought those motions in the past.
2 I don't think a sale or an assignment makes much
3 difference. It's a sale for the purposes of bringing
4 litigation.

5 THE COURT: I'm not going to answer any of
6 these questions. I'm giving plaintiffs their chance to
7 amend, to put in their papers. What I'm trying to do
8 here is see whether or not it makes sense to eliminate
9 one more step, to set a motion schedule today because
10 they're going to be giving their papers. I've
11 identified to them what I saw as the number one issue.
12 Once they replead, it may be a completely different
13 ball game because maybe all of those questions will be
14 satisfied by the new papers.

15 But the other issues that I told you -- 9(b)
16 of the Federal Rules require that broad claims be
17 pleaded with specificity. They're making the claim in
18 their pre-motion conference request that you failed to
19 do that. Likewise, with RICO, you have to allege that
20 there's an enterprise. You've recited the elements of
21 RICO but that wouldn't be sufficient. Statute of
22 limitations -- the dates that are given in the present
23 complaint are 2007. That would make most of your
24 claims untimely because the statute of limitations
25 begins to run when plaintiff discovers or should have

1 discovered the RICO injury.

2 New York law has a longer -- it has a six-
3 year statute of limitations for breach of fiduciary
4 duty or fraud claims. But, again, now that you've been
5 given their agreement, you said that you had no
6 knowledge of an arbitration agreement, now you see that
7 there is, at least in the operating agreements that
8 were, they say, executed in connection with a potential
9 investment in Care and Maimonides.

10 So when you say potential investments, did
11 he invest or didn't he invest?

12 MR. MILLER: Your Honor, it's unclear -- by
13 the way, this agreement covers Maimonides but not Care
14 to Care. It's unclear whether any investment was
15 actually made, as the parties' course of dealing went
16 forward. We just haven't finished our factual
17 investigation.

18 THE COURT: How could you not know if any
19 investment was made?

20 MR. MILLER: Your Honor, one of the things
21 we're trying to track down, I think collectively with
22 Mr. Antar, is what assets are in the estate. We're
23 just having a little bit of trouble finding documents.

24 THE COURT: I don't care about the estate.
25 How could your clients not know whether or not this was

1 actually a consummated deal?

2 MR. MILLER: Only because we don't have the
3 2007 documents yet.

4 THE COURT: Why don't you have the 2007
5 documents?

6 MR. MILLER: Simply because I understand
7 that they weren't on site and they're being obtained.

8 THE COURT: Mr. Miller, that's a little bit
9 shady for me.

10 MR. MILLER: With the uncertainty, I don't
11 want to make any representations as to what the
12 parties' course of dealing was at the time. It was
13 complicated and I could be --

14 THE COURT: You found an operating
15 agreement.

16 MR. MILLER: Yes.

17 THE COURT: So how do you have that from
18 November of 2007 and nothing else?

19 MR. MILLER: I don't really have any answer
20 to that question other than that was a document that
21 was more readily available.

22 THE COURT: This is one fine mess. I'm
23 going to schedule the amended complaint within two
24 weeks and I'm going to tell you to make your request
25 back to Judge Vitaliano within two weeks of their

1 repleading, so that's by the 23rd.

2 If they're going to make a request, at least
3 you should confer on dates, because if Judge Vitaliano
4 doesn't feel that he needs to call you in, it may save
5 all of your time. If they're going to test your
6 pleadings by making a motion, you should at least agree
7 upon a schedule, okay?

8 MR. ANTAR: Yes.

9 THE COURT: And to the extent, Mr. Miller,
10 your clients are still looking for documents regarding
11 what was a potential investment made by Tibor
12 Steinberger, the individually named defendants, Jack
13 and Bluma Lefkowitz, the codefendant Maskil El-Dal, the
14 Care to Care and Maimonides and Medscan should all be
15 put on notice to preserve any documents and to produce
16 any documents regarding any investment by Tibor
17 Steinberger. They produced a check, so that should
18 Brooklyn tracked down through a bank.

19 MR. MILLER: There's a produced check?

20 MR. ANTAR: We haven't produced. We've
21 alleged where the money went, where money was
22 transferred to banks abroad.

23 MR. MILLER: That has been -- one thing if I
24 could just note, your Honor, just to put plaintiffs on
25 notice. I don't think Care to Care has been served

1 yet. There is a docket entry that actually says notice
2 of service Care to Care.

3 THE COURT: Let me look.

4 MR. MILLER: The document underlying that is
5 the notice of service on Maimonides. My understanding
6 from Care to Care is they just haven't been served.
7 I'm just raising that to be fair.

8 THE COURT: I'm glad that you did raise
9 that. That is an issue for you to attend to --

10 MR. ANTAR: Yes.

11 THE COURT: -- because you're going to have
12 to serve the original complaint and the summons on Care
13 to Care before any amendment is served on any counsel.

14 Mr. Miller, are you under -- do you believe
15 that you're going to be representing Care to Care?

16 MR. MILLER: Right now, I think not. That's
17 a separate entity.

18 THE COURT: I'm trying to locate it on the
19 docket sheet.

20 MR. MILLER: I want to say it's docket entry
21 3. I could be wrong about that. It says Care to Care
22 in the docket tag but the document is just --

23 MR. ANTAR: Care to Care is a corporation.

24 MR. MILLER: LLC.

25 MR. ANTAR: LLC. The Secretary of State

1 would serve them.

2 MR. MILLER: I just don't think it was.

3 MR. ANTAR: Okay.

4 MR. MILLER: I think it was just an
5 oversight.

6 MR. ANTAR: We'll check into it.

7 THE COURT: You're going to have to have the
8 proof of service --

9 MR. ANTAR: Yes.

10 THE COURT: -- put on to the docket. Look
11 into it before the time elapses. I'm giving you until
12 August 9th to serve an amended complaint. You cannot
13 serve an amended complaint on the unserved, if they are
14 unserved, Care to Care without a summons. You still
15 need to get a summons issued. After the amended
16 complaint is filed, if the time on the original summons
17 -- you should still have time. It's 120 days from the
18 filing of the complaint to serve, so the original
19 summons should still have time left.

20 If you haven't already gotten proof of
21 service on Care to Care, take care of getting them
22 served, whether it be with the original or the amended
23 complaint, but do serve them with a summons and
24 complaint and then get proof of service filed. And by
25 the 23rd, the defendants who have been served -- you

1 only need to serve Mr. Miller for those defendants --
2 will make any request to Judge Vitaliano and include a
3 schedule that's been discussed, if they're going to
4 make a motion. Give Mr. Antar and Mr. Gross the
5 courtesy of agreeing to a schedule and putting that in
6 the letter to Judge Vitaliano.

7 MR. MILLER: We will, your Honor.

8 THE COURT: Is there anything further, Mr.
9 Antar, before we adjourn?

10 MR. ANTAR: Nothing further, your Honor.

11 THE COURT: Anything further on behalf of
12 defendants who have been served, Mr. Miller?

13 MR. MILLER: No, your Honor.

14 THE COURT: Then this matter is adjourned
15 and I'll put out a minute order.

16 MR. ANTAR: Thank you.

17 THE COURT: Thank you.

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18 I certify that the foregoing is a correct
19 transcript from the electronic sound recording of the
20 proceedings in the above-entitled matter.
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25 ELIZABETH BARRON

August 2, 2013